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From: Cher Mohi <Cher@tuwharetoa.co.nz>
Sent: Tuesday, 28 April 2020 6:00 PM
To: Joan Forret <Joan.Forret@harkness.co.nz>
Cc: Maria Nepia <maria@tuwharetoa.co.nz>; 'Joanne Lewis' <joanne@lewisconsultancy.co.nz>; Jay Rajendram <Jay.Rajendram@harkness.co.nz>; 'David Forsyth' <davidf@cheal.co.nz>
Subject: Tuwharetoa Maori Trust Board response on Whareroa proposal

Kia ora Joan,

Thank you for your continued open engagement with the Tuwharetoa Maori Trust Board on the proposed land development at Whareroa. We note that this discussion has been ongoing since 2018 where the Trust Board has been clear on our position.

Following on from our recent discussions and your request for us to respond in writing to your letter dated 20 April please see confirmation of the Trust Board's position.

The proposal as set out in your correspondence dated 20 April appears to be a sensible approach which enables the Trust Board to support a deed over our property (Whareroa Stream Bed) for access purposes (a bridge) relating to the development of Hauhungaroa lands. The proposed legal mechanisms of a deed agreement and Maori Roadway status looks appropriate and meets our requirements, however to be clear we do not speak on behalf of Taupo District Council and it is our understanding that the Council will need to agree that what is proposed is suitable for their purposes.

So in short I am pleased to confirm that the Trust Board is in a position to approve 'in principle' the legal instruments as set out in the correspondence dated 20 April on the understanding that all three parties [Trust Board, Hauhungaroa and Taupo District Council] can formally agree the details of an agreement.

We hope this provides you with the clarity you are after, as always happy to discuss this further.

Ngā mihi

Cher Mohi-Duff

Natural Resources - Environmental Coordinator

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*Me Tiaki te Taiao – Nga Hua o Ranginui raua ko Papatuanuku
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20 April 2020

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Attention: Maria Nepia and Cher Mohi

Proposal for Maori Roadway and Deed

1. We act for the Proprietors of Hauhungaroa No.6 (**the Incorporation**). This letter follows our discussion with Cher Mohi at a Zoom meeting on Friday 17th April.
2. The Incorporation is the proponent of Proposed Plan Change 36 (**PPC36**) to the Taupo District Plan. PPC36 is a private plan change which seeks to rezone a 14.63 hectare area north of Whareroa Stream adjoining the existing Whareroa settlement. PPC36 seeks to rezone this subject land from Rural Environment to Residential.
3. Taupo District Council (**TDC**) has received submissions on PPC36. The TDC has appointed and delegated an independent panel of Commissioners in accordance with the Joint Management Agreement with the Tūwharetoa Māori Trust Board (**Tūwharetoa**). The panel will hear the submissions on PPC 36 and make decisions on those submissions. The hearing is scheduled to start on 13 May 2020.

Part Hauhungaroa 6A Block

4. Part of the land that is affected by PPC36 is the 18.9873 hectare parcel of General Land legally described as "Part Hauhungaroa No 6A Block" (**the 6A Block**). The Whareroa Streambed (**the Streambed**) adjoins the 6A Block (**LINZ title attached**).
5. Taupo District Council has raised the question of the legal status of the bridge proposed to cross the Streambed to serve as access to the proposed residential development (**the proposed development**). In particular, Council is concerned that the bridge structure may not be able to vest in Council because the bridge will cross land owned by Tuwharetoa (the Streambed).
6. Council officers are also concerned that lack of status as a council owned road could prevent Council from managing the road (for example controlling traffic speeds and movements on the bridge) and prevent access to NZTA funding for future maintenance.

Access and Bridge

7. We understand and appreciate that Tūwharetoa owns the Streambed and also supports the proposed development including the access road and bridge but is unlikely to agree to forego property ownership rights in relation to the streambed. We understand that Tūwharetoa has indicated willingness to agree to a licence or easement-type arrangement which would give the public lawful access over the



Streambed. The difficulty is that a licence doesn't provide legal security for TDC and an easement may not provide access to NZTA funding.

8. In order to provide TDC with some confidence around the legal mechanism that could apply to the bridge, the Incorporation sought legal advice from Michael Grayson (**MG**), of law firm Grayson Clements Limited who are Crown Accredited Agents and were closely involved with preparing the Deed of Settlement with Tuwharetoa which vested the ownership of the bed of Lake Taupo and its tributaries in the Tuwharetoa Trust.
9. The essence of the proposal discussed with Cher is set out below together with further legal context.

Proposal

10. The Incorporation proposes an agreement between Tuwharetoa, TDC and the Incorporation whereby a bridge would be built by the Incorporation and owned by TDC while Tūwharetoa would retain legal ownership of the Streambed.
11. In order to provide legal status for the bridge, MG suggested that the road over the bridge could be declared a Maori Roadway. This would follow a joint application to the Maori Land Court by the Incorporation, TDC and Tuwharetoa.
12. The advantage of the bridge having Maori Roadway status is:
 - (a) The laying out of a Maori Roadway over any land will confer on all persons the same rights of user as if it were a public road.¹ The Court will, however not lay out a roadway connecting with any public road without the consent of the territorial authority for the district in which the connection would be effected.²
 - (b) The Local Government Act 1974 (**the LGA**) then allows for a local council to maintain, repair or improve any Maori Roadway laid out in the district.³
 - (c) The LGA also allows for a council to contribute towards the cost of maintaining, repairing, widening, or improving a Maori Roadway.⁴ Before exercising these powers however, consent must be obtained from the owners of the land comprising that roadway.⁵
 - (d) There is also a provision in the Land Transport Management Act 2003 (**the LTA**) which allows for the NZTA to approve payments to a territorial authority in respect of a Maori Roadway, as if the roadway were a local road.⁶ This provision should address TDC's concerns around future maintenance funding for the bridge.

Process going forward

13. The Incorporation proposes that alongside an application for bridge access being declared a Maori Roadway by the MLC, a Deed is entered into between Tūwharetoa and TDC.

¹ Te Ture Whenua Maori Act 1993, s 318(2).

² s 317(6).

³ Local Government Act 1974 s 324A (1)(a).

⁴ s 324A (1)(b).

⁵ S 324A (2)(a).

⁶ Land Transport Management Act 2003, s 22(2).




14. A Deed would consider all the issues of importance to the parties and provide for access, maintenance and ownership of the bridge structure, giving certainty to all parties. The Deed would also include terms to deal with any damage or erosion effects on the Streambed together with remedial obligations and mechanisms to prevent the risk of contamination from the road, construction activities or any other cause. It will also cover details and security of services and utilities which will be attached to the bridge in order to service the subject land.
15. The Incorporation intends to ask the MLC to approve a land exchange between its farm holding and the area of SNA that will be protected and is currently within the 6A Block. It would be efficient for the parties to make a joint application to the MLC seeking all orders as part of a basket of changes that will support the Incorporation's development goals.
16. It is anticipated that the terms of the Deed and application to the MLC would take some time to finalise and that this will happen after the rezoning of the land is confirmed but before subdivision and development consents are given effect.

Desired Outcome

17. The hearing for PPC 36 is scheduled to begin on 13 May 2020 and the Council's planning report with recommendations is due this Wednesday 22 April. The Incorporation's briefs of expert evidence are due to be filed with the hearing panel on Wednesday 29 April. The evidence will also be available on the TDC website from then.
18. To address the concerns expressed by TDC around the issue of access to the proposed development, the Incorporation seeks an 'in principle' agreement, in writing, from Tūwharetoa. We would ideally provide that 'in principle' agreement to Council as soon as possible and as an annexure to the Incorporation's evidence.
19. The agreement would confirm that Tūwharetoa is willing to negotiate a Deed to provide bridge access to the proposed development and agrees in principle that a portion of stream bed, encompassing the bridge could be declared a Maori Roadway subject to MLC approval, with costs to be borne by the Incorporation.
20. Given the time pressures we would appreciate a response to this letter in the next few days if at all possible. A response confirming that you have considered this letter and support the proposals set out in paragraphs 9 - 18 above should be sufficient at this stage. We look forward to your response.
21. Please do not hesitate to contact us if you have any comments or queries.

Yours faithfully
Harkness Henry
SPECIALIST LAWYERS



JOAN FORRET

Partner
encl.

